18.04.18 18.04.18 18.04.18, 22.04.18 23.04.18

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

CITED IN 10 SCOB 140 (HCD)

WRIT PETITION No. 5541 OF 2015

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

-AND-

IN THE MATTER OF:

Naripokkho and others
- Petitioners

-vs-

Bangladesh and others.
- Respondents.

And

Ms. Sara Hossain, Advocate, with
Mr. Z.I. Khan Panna, Advocate with
Ms. Masuda Akhter Rosie, Advocate with
Ms. Sharmin Akter, Advocate and
Ms. Mehbuba Akhter Jui, Advocate
.... for the Petitioners.
Ms. Amatul Karim, D.A.G with
Ms.Nusrat Jahan, A.A.G. with
Ms. Bilkis Fatema, A.A.G.
.... for the Respondent Government.

Heard on 12.08.2015, 12.11.2015, 18.11.2015 and 17.02.2016.
Judgment on 18.02.2016.

Present:

Mrs. Justice Farah Mahbub.
and
Mr. Justice Kazi Md. Ejarul Haque Akondo

Farah Mahbub, J:

In this Rule, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called

upon to show cause as to why the impugned action of causing delay by the respondents Nos. 4-6 in lodging FIR regarding the allegation of rape of the victim as well as in sending her to the Victim Support Centre and also causing delay of over 24 hours of the alleged occurrence in sending her for medical examination should not be declared to be without lawful authority and of no legal effect, being a violation of their constitutional and statutory duties including section 32 of the Nari-O- Shishu Nirjaton Daman Ain,2000 (as amended in 2003) and also a violation of the fundamental rights of the victim as guaranteed under Articles 27,28 and 31 of the Constitution of the People's Republic of Bangladesh; also, as to why the respondents should not be directed to compensate the victim for violation of her fundamental right to equal protection under the law, including prompt recording of her complaint and medical examination, and also as to why the respondents Nos. 1,2 and 3 should not be directed to take disciplinary action against the concerned police officers responsible for causing such delay in recording the complaint of the victim and sending her to the Victim Support Centre including taking steps for her medical examination; and also as to why the respondent Nos.1,2 and 3 should not be directed to frame and disseminate a circular to all the respective police stations within Dhaka Metropolitan Area and beyond, on their obligation to ensure that required services are provided to all concern without any discrimination in particular on the grounds of religion, race, sex, caste or place of birth, and to record promptly and without delay any complaint so

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received regarding the allegation of rape and or such other or further order or orders passed as to this Court may seem fit and proper.

The petitioner No.1 is a membership-based women's activist organization working since 1983. It is registered with the Ministry of Women and Children Affairs, under the Voluntary Social Welfare Agencies(Registration and Control) Act,1961 and that it is at the forefront in mobilizing grassroot women's organizations and designing platforms for the advancement of women's rights and entitlements and building resistance against violence, discrimination and injustice. It has developed training modules for developing institutional capacity for the police, medical personnel, and judicial officers on human rights promotion, and training manual for police and medical personnel on gender and violence against women; it undertakes research, awareness raising, advocacy and action to prevent violence against women, including thorough working with women to build solidarity and increase confidence, and working with the community and the government to assist in order to bring about accountability of the government services dealing with cases of violence against women.

The petitioner No.2 is the largest national women's human rights organisation and is registered as a society under the Societies Act, 1860, which has been working to empower women and has provided support including legal aid and emergency shelter to hundreds of women and girls who are victims of rape and violence

across the country. It played a leading role in campaigning to end violence against women and in leading the movement for reforms of law, policy and procedure.

The petitioner No.3 is a national organisation involved in raising awareness on citizen's rights and against discrimination and inequality on the basis of ethnicity and campaigns to ensure empowerment and rights of "আদিবাসী" communities, including from the Sawtals, Oraons, Mundas, Garo, Monipuri, Khasia and other communities, to equality and equal protection under the law.

The petitioner No.4 is a national legal aid and human rights organisation established in 1986 as a society under the Societies Act, 1860 which aims to establish the rule of law based on principles of equality, democracy and human rights justice and gender equity and has a long track record in undertaking public interest litigation on women's rights.

The petitioner No.5 is a national legal services and human rights organization, incorporated as a non-profit company under the Companies Act and established following a resolution of the Bangladesh Bar Council to provide legal aid and has a long track record of litigating in public interest and has conducted research on the collection of medico-legal evidence in cases of rape.

The petitioners being aggrieved by reports regarding the repeated refusal of the respective police officers to record an FIR(First Information Report) by the victim regarding an allegation of rape and

delay in sending her to the Victim Support Centre and also causing delay in sending her for medical examination in breach of their statutory duties under section 32 of the Nari-O-Shishu Nirjaton Daman Ain,2000(as amended in 2003)(in short, the Ain) as well their constitutional duties which require them to ensure the right of women and girls without discrimination on any ground whatsoever, to protect against sexual violence, including thorough and prompt recording of an FIR, immediate emergency assistance by referral to a Victim Support Centre, and prompt medical examination within 24 (twenty four) hours, as guaranteed under Articles 27,28 and 31 of the Constitution of the People's Republic of Bangladesh (in short, the Constitution), have filed the instant application as public interest litigation, whereupon present Rule Nisi has been issued.

The facts and circumstances in the context of which this petition arises are as follows-

According to reports, published in several national newspapers dated 23.05.2015, at around 9:25 p.m. on 21.05.2015, a 21 year old woman from Garo community, while waiting after completion of her work at the Biswa Road Bus Stop in front of Jamuna Future Park, Dhaka was suddenly forced into a grey coloured microbus by 2(two) youths and was allegedly raped by them along with 3 (three) others in the said vehicle, while it circled around Kuril Biswa Road and the street in front of Jamuna Future Park.

After a period of one and half hours, at around 10.45 p.m. she was reportedly dumped at Jasimuddin Road in Uttara. Information so gathered from the respective news reports as well as from the victim's family suggested that subsequent to alleged occurrence the victim reportedly went to different police stations at around 4.00 a.m. i.e., at Uttara Police Station, than to Khilkhet Police Station and then to Gulshan Police Station but on every occasion she was refused on the purported ground that the incident occurred within the jurisdiction of another police station. After reaching Vatara Police Station at around 6 a.m., she was reportedly compelled to wait for 3(three) hours for the Officer-in-Charge in order to have her information recorded under section 154 of the Code of Criminal Procedure (in short, the Code). Her information was finally recorded and registered at 12.30. p.m. on Friday 22.05.2015(Annexure-A).

It has also been stated that the respective police officers at Vatara Police Station finally sent the victim to the Victim Support Centre(in short, the Centre) at Tejgaon on Friday 22.05.2015 and informed her that she would be sent to Dhaka Medical College Hospital on Saturday, 23.05.2015 for medical examination; in other words, after more than 24(twenty four) hours of the alleged occurrence. Thus, occurs violation of section 32 of the Nari-O-Shishu Nirjaton Daman Ain, 2000(in short, the Ain).

বাংলাদেশ কোর্ট ফি
দুই টাকা

Said tragic incident had resulted in widespread protests by a cross-section of citizens, including different organizations and others, demanding action to ensure a safe environment for women and girls in particular working women, especially those from marginalized communities, to exercise their fundamental rights to personal liberty, to movement and occupation, and demanding action against the police for their failure to ensure a prompt and effective response to a serious allegation of sexual violence.

In view of the above context, a direction was given upon the respondents concern to frame and disseminate a circular to all the respective police stations within Dhaka Metropolitan Area and beyond, on their obligation to ensure that required services are provided to all concern without any discrimination in particular on the grounds of religion, race, sex, caste or place of birth, and to record promptly and without delay any complaint so received regarding the allegation of rape. The respondent Nos.1,2 and 3 were further directed to report within 03(three) weeks on the action so taken to identify those who were responsible for the impugned action.

In compliance thereof respondent Nos.1,2 and 3 filed separate sets of affidavit in compliance more or less on similar standing.

In the affidavit filed by the respondent No.2 i.e., Inspector General of Police it has been stated, *inter alia,* that pursuant to the direction of this Hon'ble Court the Additional DIG(Special Crime), Police Headquarters, Dhaka was instructed to formulate and

disseminate the circular vide Memo No.Ain/Writ/47-2015/(Writ-5541/15)/934 dated 01.06. 2015. The Police Commissioner of Dhaka Metropolitan Police was also instructed to conduct a thorough inquiry regarding the acts and omission of the concerned police personnel in the process of receiving complaint of gang rape and the associated responsibilities thereby. The updates in relation to investigation of the criminal case was also asked to be provided vide Memo No. Ain/Writ/47-2015/(Writ-5541/15)/934 dated 01.06. 2015(Annexure-2 series).

Accordingly, a circular was issued bearing No.02/2015 under the signature of the Inspector General of Police through an office Memo bearing No. Na: O Shi: Pro: Cell/Circular /44.01.0000.047.01.011.15.223/1 (105) dated 10 .06. 2015 containing the directions and guidelines for the police officers concern of the respective police stations to be followed/ adopted on receipt of information of rape and or associated allegations.

Circular No.02 of 2015 is quoted herein below:-

" গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
বাংলাদেশ পুলিশ
পুলিশ হেডকোয়ার্টার্স, ঢাকা।

পরিপত্র নং-০২/২০১৫

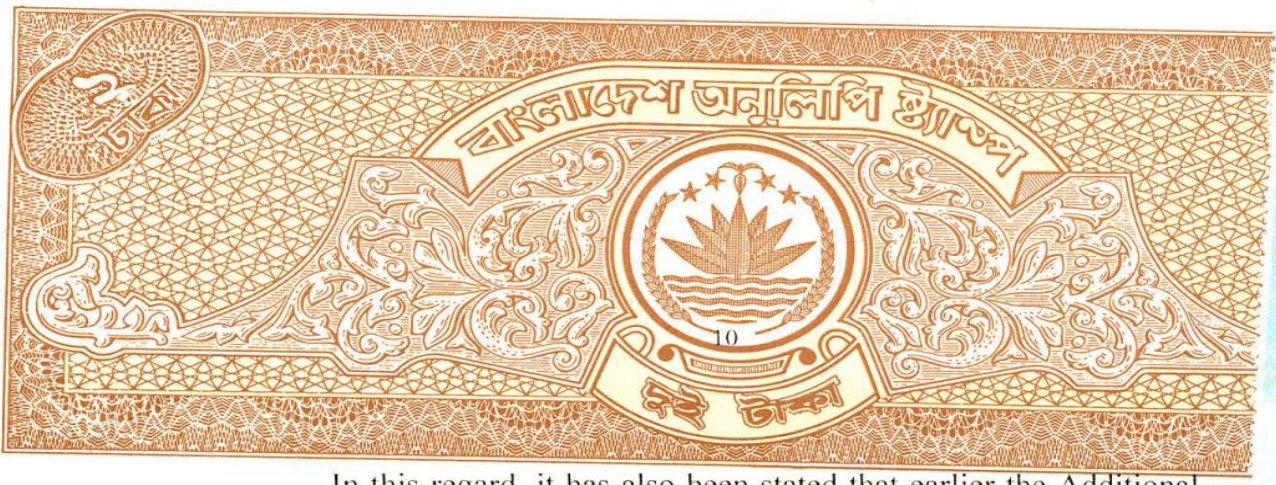
বিষয়ঃ মহামান্য সুপ্রিম কোর্টের হাইকোর্ট বিভাগে দায়েরকৃত রিট পিটিশন নং-৫৫৪১/২০১৫ এর আলোকে নারী ও শিশু নির্যাতন মামলা রুজু সংক্রান্তে দিক-নির্দেশনা।

সূত্রঃ স্মারক নং-আইন/রিট/৪৭-২০১৫/(রিট-৫৫৪১)/৯৩৪ তাং-০১/০৬/২০১৫ খ্রিঃ।

মহামান্য সুপ্রিম কোর্টের হাইকোর্ট বিভাগে দায়েরকৃত রিট পিটিশন নং-৫৫৪১/২০১৫ এর আদেশের আলোকে ধর্ষণ, যৌন হয়রানিসহ নারী ও শিশু নির্যাতনের

অভিযোগের সংবাদপ্রাপ্তি, মামলা রুজু ও তদন্ত বিষয়ে নিম্নবর্ণিত নির্দেশনাসমূহ প্রদান করা হল।

০১। বাংলাদেশ পুলিশের সকল সদস্য গণপ্রজাতন্ত্রী বাংলাদেশের পবিত্র সংবিধানের বিধানাবলী সমুন্নত রেখে দায়িত্ব পালন করবেন।
০২। ধর্ষণ, যৌন হয়রানি/যৌনপীড়নসহ নারী ও শিশু নির্যাতনের অভিযোগসমূহের ক্ষেত্রে সংবিধানের অনুচ্ছেদ ২৭(আইনের দৃষ্টিতে সমতা), অনুচ্ছেদ ২৮(ধর্ম প্রভৃতি কারণে বৈষম্য), অনুচ্ছেদ ৩১(আইনের আশ্রয় লাভের অধিকার) এবং নারী ও শিশু নির্যাতন দমন আইন আইন, ২০০০(সংশোধনী/২০০৩) এর ৩২ ধারায় (অপরাধের শিকার ব্যক্তির মেডিকেল পরীক্ষা) বিষয়ক বিধানাবলীর প্রকৃত মর্ম অনুধাবনপূর্বক যথাযথ প্রয়োগ নিশ্চিত করতে হবে।
০৩। ধর্ষণ, যৌনপীড়নসহ নারী ও শিশু নির্যাতন সংক্রান্ত অপরাধের কোন অভিযোগ থানায় আসার সাথে সাথে কোন প্রকার বৈষম্য ও বিলম্ব ছাড়াই মামলা রুজু করতে হবে।
০৪। অপরাধের শিকার/ভিকটিম/ভুক্তভোগী/সারভাইভারদের অবিলম্বে ডাক্তারী পরীক্ষা করার ব্যবস্হা গ্রহণ করতে হবে।
০৫। অপরাধের আলামতসমূহ যথাযথভাবে সংগ্রহ, সংরক্ষণসহ সেগুলোর প্রয়োজনে দ্রুত রাসায়নিক/ডিএনএ পরীক্ষার ব্যবস্হা করতে হবে।
০৬। যে সকল অধিক্ষেত্রে ভিকটিম সাপোর্ট সেন্টার/ওয়ান স্টপ ক্রাইসিস সেন্টার/সেল প্রতিষ্ঠিত হয়েছে সে সকল অধিক্ষেত্রে ধর্ষণ বা যৌন পীড়নের শিকার ব্যক্তি/ভিকটিম/সারভাইভার্সদেরকে প্রয়োজনে উক্ত ভিকটিম সাপোর্ট সেন্টার/ওয়ান স্টপ ক্রাইসিস সেন্টার/সেলে প্রেরণ করত মামলার তদন্ত কার্যক্রম অব্যাহত রাখতে হবে।
০৭। নারী ও শিশু নির্যাতন প্রতিরোধকল্পে ইতোপূর্বে পুলিশ হেডকোয়ার্টার্স হতে জারিকৃত স্মারক নং- নাঃ ও শিঃ নিঃ প্রঃ সেল/সার্কুলার/০১-২০১৩/১৩০(২০)/০১ তারিখ ০৫/০২/২০১৩ খ্রিঃ এর যথাযথ প্রতিপালন নিশ্চিত করতে হবে।"

In compliance of the direction of this Hon'ble Court said circular was duly disseminated to all the police stations within Dhaka Metropolitan Area and beyond on the obligation of police personnel to ensure that required services are provided to all concern without any dicrimination in particular on the grounds of religion, race, sex, caste or place of birth, and to record promptly and without delay any complaint so received regarding the allegation of rape(Annexure-IV). The above steps so far have been taken were duly notified by the Police Commissioner, DMP, Dhaka to the Ministry of Home Affairs vide Memo No.225 dated 12.07.2015 (Annexer-3).

In this regard, it has also been stated that earlier the Additional DIG (Special Crime and Prosecution) on behalf of the respondent No.2 had circulated instructions amongst all the departments concern of police for preventing torture against women and children vide Memo No. Na: O Shi: Pro: Cell/Circular/01.2013/130(20)/1 dated 05.02.2013 giving reference to Memo No.jamak/che/do /177/ 12/18 dated 09.01.2013(Annexure-5) issued by the National Human Rights Commission, which runs as under-

" গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
বাংলাদেশ পুলিশ
পুলিশ হেডকোয়ার্টার্স, ঢাকা।

স্মারক নং-নাঃ ও শিঃ নিঃ প্রঃ সেল/সার্কুলার/০১/২০১৩/১৩০(২০)/১।
তারিখঃ০৫/০২/২০১৩খ্রিঃ।
প্রতি,

০১। অতিরিক্ত আইজি, এসবি/সিআইডি / এপিবিএন, বাংলাদেশ পুলিশ, ঢাকা।
০২। মহাপরিচালক(র‍্যাব), ফোর্সেস হেডকোয়ার্টার্স, ঢাকা।
০৩। পুলিশ কমিশনার, ডিএমপি/ সিএমপি/কেএমপি/এসএমপি/বিএমপি।
০৪। ডিআইজি, ঢাকা/ চট্টগ্রাম/ রাজশাহী/খুলনা/বরিশাল /সিলেট/ রংপুর/ রেলওয়ে / হাইওয়ে রেঞ্জ, বাংলাদেশ পুলিশ।
০৫। ডিজি, ইন্ডাস্ট্রিয়াল পুলিশ, উত্তরা ঢাকা।

বিষয়ঃ নারী ও শিশু নির্যাতন প্রতিরোধে দিক-নির্দেশনা প্রেরণ প্রসঙ্গে।
সূত্রঃ মানবাধিকার কমিশন এর স্মারক নং - জামাক/চে/ডিও /১৭৭/১২/১৮,তারিখ-০৯/০১/২০১৩ খ্রিঃ।

উপর্যুক্ত বিষয় ও সূত্রোক্ত স্মারকের প্রেক্ষিতে জাতীয় মানবাধিকার কমিশন হতে প্রাপ্ত পত্র এতদসঙ্গে প্রেরণ পূর্বক জানানো যাচ্ছে যে, দেশে আশংকাজনকভাবে নারীর প্রতি সহিংসতা তথা ধর্ষনের হার বৃদ্ধি পাওয়ায় তা রোধকল্পে নিম্নবর্নিত দিক নির্দেশনা সমূহ পালনের জন্য নির্দেশক্রমে অনুরোধ করা হলো।

০১। নারী নির্যাতন সংক্রান্ত ঘটনায় রুজুকৃত মামলায় অভিযুক্ত আসামীদের দ্রুত গ্রেফতার করা।
২। রাজনৈতিক বিবেচনা না করে প্রকৃত আসামীদের বিরুদ্ধে আইনানুগ ব্যবস্থা গ্রহন করা।
৩। ভিকটিমের আলামত যথাযথভাবে সংগ্রহ, সংরক্ষনসহ যথাসময়ে বিজ্ঞ আদালতে উপস্থাপন নিশ্চিত করা।
৪। মামলার আলামত যথাযথভাবে সংগ্রহ, সংরক্ষনসহ যথাসময়ে বিজ্ঞ আদালতে উপস্থাপন নিশ্চিত করা।
৫। মামলা আপোষ-মিমাংসা হতে বিরত থাকার জন্য প্রয়োজনীয় কার্যক্রম গ্রহন করা।

৬।বিচারের দির্ঘসুত্রিতা রোধে যথাসময়ে সাক্ষীদেরকে আদালতে হাজির নিশ্চিত করা।
৭। সামাজিকভাবে হেয় প্রতিপন্ন যাতে না হয় সে লক্ষ্যে জনসচেতনতা মূলক কার্যক্রম গ্রহন করা।
৮। বিজ্ঞ আইনজীবী কর্তৃক সাক্ষী ফেরৎ রোধকল্পে সাক্ষীদেরকে ডিসি, প্রসিকিউশন/কোর্ট পুলিশ পরিদর্শক এর নিকট রিপোর্ট করতঃ বিজ্ঞ পিপির মাধ্যমে সংশ্লিষ্ট আদালতের উপস্থাপন নিশ্চিত করা। ”

However, so for initiating disciplinary actions against the officers concern it has been stated, *inter-alia*, that pursuant to the order dated 25.05.2015 passed by this Hon'ble Court and being directed by the respondent No.2, at the instance of the respondent No.3, Dhaka Metropolitan Police formed a 3(three) members inquiry committee headed by the Joint Police Commissioner (Crime), Dhaka Metropolitan Police, Dhaka vide its order No.76 dated 04.06.2015. During the course of inquiry the committee collected the FIR regarding the incident of rape, related General Diaries and other documentary evidence. Moreover, the committee recorded the statements of 15(fifteen) persons including the victim. It also considered the progress of investigation of Bhatara Police Station Case No.26 dated 22.05.2015 lodged under sections 7/9(3) of the Ain, 2000 and finally submitted a report on 13.06.2015 with the recommendation to take appropriate action against Md. Nurul Mottakin, Officer-in-Charge, Bhatara Police Station and Jahirul Islam, Sub-Inspector, Gulshan Police Station for their inefficiency(Annexure-I). In view of the said recommendation respective show cause notices were served upon both the delinquent officers as to why disciplinary action should not be taken against them

under rule 3(ka) and (cha) of the Metropolitan Police (Discipline and Appeal for Sub-bordinate Officers) Rules, 2006 vide Memo No. নথি/২০১৫/আর, ও-২(পিএসএন্ডআইআই)/গুলশান-১৪/১৫)/৩৫৯৭ dated 28.06.2015 and Memo No. নথি/২০১৫/আর, ও-২(পিএসএন্ডআইআই)/গুলশান-১৪/১৫)/৩৫৯৯ dated 28.06.2015 respectively(Annexure-II and III).

On receipt thereof they gave reply and applied for personal hearing. Allowing their prayer for personal hearing namely unarmed Police Inspector Md. Nurul Mottakin(BP No.689104038), Officer (In Charge), Vatara Police Station, Gulshan Division, DMP, Dhaka and S.I. Zahirul Islam(BP No.8411133479) Gulshan Police Station, Gulshan Division, DMP, Dhaka were held on 02.09.2015 and 29.07.2015 respectively. Considering their oral submissions, written statements, inquiry reports and other relevant records(Annexure-6) unarmed Police Inspector Md. Nurul Mottakin(BP No.689104038), Officer (In Charge), Vatara Police Station, Gulshan Division, DMP, Dhaka was ultimately awarded punishment of reprimand under rule 4(ka)(5) of the Metropolitan Police(Discipline and Appeal for sub-ordinate Officers) Rules,2006 vide the order of the Commissioner (PS and II) No.73 dated 02.09.2015 and S.I. Zahirul Islam(BP No.8411133479) Gulshan Police Station, Gulshan Division, DMP, Dhaka was awarded with fine equivalent to 15 (fifteen) days salary under rule 4(ka)(2) of the said Rules,2006 vide the order of

Professional Standard and Internal Investigation Department (PS and II) No.454 dated 29.07.2015.

It has also been stated that the victim was shifted to Victim Support Centre, her medical examination was conducted, DNA samples were taken, the microbus used in the criminal act was confiscated, 2(two) suspects who were arrested in the connection with the case concern confessed their involvement in the criminal act and their statements were duly recorded by the learned Magistrate concern under section 164 of the Code of Criminal Procedure (in short, the Code).

In addition, the Deputy Secretary, Ministry of Home Affairs by exercising power as provided under section 6B(1) of the Armed Police Battalions(Amendment) Act,2003 had vested the duty of investigation of Vatara Police Station Case No.26 dated 22.05.2015 under section 7/9(3) of the Nari O Shishu Nirjatan Daman Ain,2000 (amended in 2003) upon RAB-01, Dhaka vide Memo No.44.00.0000.056.09.011.12-96 dated 4.06.2015. After completion of investigation the investigating agency submitted police report being charge sheet No.175 dated 16.08.2015 recommending the name of (two) accused persons to stand trial.

In this regard by filing a supplementary affidavit the petitioners have contended that no specific directions have been set out in the circular dated 10.06.2015 to address the obstacles faced by the victims of rape and sexual violence. In particular, clause 3 of the said circular

does not specify that a complaint of rape must be accepted by any police station to which it is brought, irrespective of where the offence occurred. In this regard, regulation 244 of the Police Regulations of Bengal, 1943 clearly specifies that a "first information report must be recorded in respect of every cognizable complaint preferred before the police............", while section 154 of the Code requires that every information relating to commission of a cognizable offence be reduced in writing by the officer to whom the information is given, with no mention or requirement of the place of occurrence to be within the jurisdiction of the police station in question. Moreover, the word "অবিলম্বে" (without delay) so used in clause 4, is vague and fails to specify that any woman or girl who reports a rape must be sent for medical examination within a specified period, preferrably within 24 (twenty four) hours of the complaint being received in order to ensure proper collection of medico-legal evidence. The word "প্রয়োজনে" (if necessary) so used in clause 5 suggests that in some cases chemical/DNA tests need to be conducted as soon as possible. In clause 6, there is no mention of whether any person is to accompany the victim, or a police officer or a VSC officer or any other person to the Victim Support Centre. Also, there is no reference in the circular as to making available interpreters in necessary cases, including for women and girls with disabilities who are victims of rape or sexual violence, or to any organisations providing such interpretation services. There is also no reference in the circular as to the

consequences of non-compliance with its provisions, or as to the procedures and criteria for monitoring such compliance.

It has also been stated that the name of the victim has been disclosed in various documents annexed to the affidavits filed by the respondents Nos. 1-3 in violation of section 14 of the Nari-o-Shishu Nirjaton Daman Ain, 2000 which prohibits publication in the media of the name of any victim in a pending case under the Ain, in order to ensure her safety and security.

Moreover, in the application dated for recalling the order of this Hon'ble Court dated 25.5.2015 and 31.05.2015 respectively the respondent No. 1 had stated that Bangladesh Law Commission is a statutory authority which is responsible for reviewing existing laws and procedures, and making recommendations, and accordingly submitted that there is no requirement to appoint a committee of experts to carry out this function. Allowing the said prayer this Hon'ble Court vide order dated 05.08.2015 recalled its earlier orders dated 25.05.2015 and 31.05.2015 respectively so far giving a direction for appointing a committee of experts to review the existing laws and procedures in connection with rape cases, and make recommendations for effective enforcement of the law.

In this regard, it has been stated that Law Commission of Bangladesh has made several recommendations specifically on reform of the laws relating to rape or sexual violence, which are quoted as follows:

a) "Final Report on a proposed law relating to protection of victims and witnesses of crimes involving grave offences" submitted on 17.10.2006;

b) "গুরতর অপরাধে ক্ষতিগ্রস্থ ব্যক্তি (victim) ও স্বাক্ষী সুরক্ষার প্রস্তাবিত আইনের শর্তাবলীর সুপারিশ বিষয়ক আইন কমিশনের প্রতিবেদন" submitted on 09.02.2011;

c) " ২০০০ ইং সনের নারী ও শিশু নির্যাতন দমন আইন,(২০০০ সনের ৮ নং আইন) এর কতিপয় ধারার প্রস্তাবিত সংশোধনী সংক্রান্ত প্রতিবেদন".

d) "নারী ও শিশু নির্যাতন দমন আইন, ২০০০ এর অধীন দায়েরকৃত মামলায় পুলিশ রিপোর্ট দাখিল বা তদন্ত শেষ না হওয়া পর্যন্ত জামিন সংক্রান্ত শুনানী কোন আদালতের এখতিয়ারাধিন তা স্পষ্টকরন বিষয়ে আইন কমিশনের সুপারিশ "

e) "Paper work on Evidence Act", published on the Law Commission website for review and comment by 18 October 2015.

But, unfortunately those reports do not appear to have been considered or acted upon by the respondent government.

Moreso, the Ministry of Women and Children has subsequently published a National Action Plan to Prevent Violence Against Women and Children 2013-2025 (Annexure- 3 to the supplementary affidavit). Said National Action Plan identifies key actions to be undertaken by different ministries and agencies to address violence against women including rape of women and girls. In particular:

a) For the Ministry of Law, Justice and Parliamentary Affairs to ensure that medical examination of women and children who are victims of violence, be carried out in a respectful way.

b) For the Ministry of Law, Justice and Parliamentary Affairs to ensure that effective services are in place for victims with special needs, including accessible environment, appropriate facilities for taking evidence from blind, hearing and speech impaired, and

intellectually disabled women and children, and implementing the practice of use of sign language where necessary.

c) For the Ministries of Law, Justice and Parliamentary Affairs, Women and Children Affairs, and Home Affairs to conduct special activities and to take initiatives for the legal support of women and children who are victims of violence through district national legal aid services committee. Further, to provide easy access to free legal support as well as assistance for support services for disabled women and children who are victims of violence.

d) For the Ministries of Women and Children Affairs and Home Affairs to ensure legal support for victims through a victim support centre, investigation unit and quick response team.

e) For the Ministry of Women and Children Affairs to ensure availability of legal advice through the national helpline centre for violence against woman and children.

f) For the Ministry of Women and Children Affairs to ensure support for cases by the national forensic DNA profiling laboratory and divisional DNA screening laboratories.

g) For Ministry of Women and Children Affairs to ensure legal support by One-Stop Crisis Centres.

h) For the Ministry of Law, Justice and Parliamentary Affairs to arrange for training to ensure gender sensitivity among doctors, nurses and police including law enforcing agencies.

i) For the Ministry of Law, Justice and Parliamentary Affairs to improve publicity among the population at the grassroot level about all types of law in preventing violence against women and children .

j) For the Ministry of Women and Children Affairs, and Home Affairs to increase publicity around the help line number 10921 for women and children who are victims of violence.

k) For the Ministry of Women and Children Affairs to establish One-Stop Crisis Centre in every public medical college hospital.

l) For the Ministry of Women and Children Affairs to establish One-Stop Crisis Centres in every private medical college hospital.

m) For the Ministry of Women and Children Affairs to develop guidelines to increase the quality of service providing institutions for women and children survivors.

n) For the Ministry of Women and Children Affairs to strengthen the services of national helpline centre for violence against women and children.

o) For the Ministry of Women and Children Affairs to establish regional trauma counselling centres at the divisional level.

p) For the Ministry of Women and Children Affairs to expand the services of psychosocial counselling in all upazilas.

q) For the Ministry of Women and Children Affairs, and Health and Family Welfare to provide for the collection and preservation of DNA samples facilities in all government medical college hospital.

r) For the Ministry of Women and Children Affairs, and Health and Family Welfare to ensure medico legal examination for the child, adolescent and women survivors at the upazilla level.

s) For the Ministry of Home Affairs to establish Victim Support Centres at all police stations.

t) For the Ministry of Women and Children Affairs, and Social Welfare to ensure the establishment of shelter homes, half way homes, drop in centres in every district.

u) For the Ministry of Women and Children Affairs to create mass awareness for the requirement of psychosocial counselling for decreasing the tendency of suicidal attack of women and children of sexual assault.

v) For the Ministry of Women and Children Affairs to provide training on language to the service providers for ensuring better services of women and children who are victims of violence.

w) For the Ministry of Women and Children Affairs, Home Affairs, and Health and Family Welfare to provide forensic report of the women and children who are victims of violence in time.

Notwithstanding the fact that recommendations of the Law Commission of Bangladesh were made decade ago but neither any attention has been paid for implementation of the same nor those Action Plan has been carried out effectively.

Accordingly, Ms. Sara Hussain the learned Advocate appearing for the petitioners submits that in the absence of standard operating

procedures being adopted for the use of law enforcement agencies in responding to complaints of rape, there is a lack of uniformity and consistency in response, resulting in a failure to ensure prompt and effective recording of complaints of sexual violence, prompt referral to the Victim Support Centre to enable prompt medical examination and a failure to ensure adequate advice and support to victims during the legal process.

Moreso, she submits that in the circular in question in some places vague language has been used, and that it does not give specific and concrete directions to address the obstacles faced by the victims seeking to report crimes of rape and sexual violence. As such, she submits that the respondents concern may be directed to take into account the recommendations of the Law Commission of Bangladesh as well as the relevant provisions of the National Action Plan, as detailed above, in order to address the gaps in laws and procedures in dealing with victims of rape and sexual assault, and to ensure that women and girls who are victims of such crimes have access to justice.

Lastly, she submits that in the absence of adequate procedural frameworks to ensure the effective protection of the victims of rape and sexual violence this Hon'ble Court may be pleased to issue guidelines.

Conversely, Ms. Amatul Karim, the learned Deputy Attorney General appearing on behalf of the respondents concern submits that

in compliance of the directions given by this Hon'ble Court the respondent No.2, the Inspector General of Police had issued circular providing guidelines on the procedure for the police to follow when dealing with cases of rape or sexual violence against women. Moreso, departmental proceedings had been duly initiated against the delinquent officers under the respective service law applicable in their case for their inefficiency while discharging their professional duties. In view of the above context, she submits, this Rule may be disposed of

The cardinal issue which arises for consideration in the matter in question is whether a police officer is bound to register a First Information Report(in short, FIR) upon receiving any information relating to commission of a cognizable offence under section 154 of the Code of Criminal Procedure,1898 irrespective of the place of occurrence.

The said issue is of great public importance and thus, needs to have a clear enunciation of law and adjudication by this court for the benefit of all concerned i.e., the court, the investigating agencies and the citizens in particular the women and the girls who are victims of rape and other forms of sexual violence.

The present writ petition, under Article 102 of the Constitution of the People's Republic of Bangladesh, has been filed by 5(five) non-governmental orginations providing legal and other support to women and girls who are victims of rape and sexual violence for issuance of a

writ of *certiorari* to declare the delay caused by the police officers concerned in recording an FIR by the victim regarding the allegation of gang rape committed on her on a moving microbus, as well as the delay in sending her to the Victim Support Centre for her medical examination. The respective petitioners also have sought for a direction upon the respondents concern to issue circular, giving guidelines on the procedure for the police to follow when dealing with cases of sexual violence against women and children, and disseminate to all police stations concern and also to ensure that they respond to the victims promptly and without discrimination based on race, religion, gender, caste or place of birth, and to submit a report identifying those who are responsible.

Upon hearing the petitioners and having found substance to the contentions so have been advanced a Rule Nisi was issued by this Court vide order dated 25.05.2015 along with directions upon the authority concern i.e., respondent Nos. 1,2 and 3 to issue and disseminate a circular to the concerned police stations on the subject matter, as referred above.

Pursuant to the above direction the respondent No.2 viz., Inspector General of Police had issued a circular bearing No.2 of 2015 dated 10.06.2015 giving guidelines on the procedure for the police to follow when dealing with cases of violence against women and children and had disseminated to all police stations concerned.

We have carefully examined the said circular dated 10.06.2015.

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Before we proceed with the said circular, it is necessary to answer the main issue being posed before this Court. In order to do so, it is relevant to refer section 154 of the Code:-

> " *154.* ***Information in cognizable cases.****- Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the [Government] may prescribed in this behalf.* "

Ms. Sara Hussain, the learned counsel appearing for the petitioners while adverting to the conditions prescribed in section 154 of the Code submitted that section 154 is mandatory as the use of the word "*shall*" is indicative of the statutory intent of the legislature and thus, leaves no room for doubt that irrespective of the place of occurrence when information relating to the commission of cognizable offence is given orally or in writing the officer in charge of the respective police station is left with no other option but to forthwith enter the same into the register maintained for the said purpose.

FIR is an important document in the criminal law procedure, its principal object, from the informant's point of view, is to set the machinery of criminal law into motion and from the view of the investigating agency is to obtain information about the alleged

occurrence and to take necessary steps to trace the accused and produce him before the court concern for trial.

The golden rule of interpretation of a statute is the literal rule of interpretation.

From a plain reading of the respective provision of law all we have to look at is what does it say. Resultantly, the language used in section 154 of the Code is the determinative factor of the legislative intent.

In this connection, it is apt to quote the following observations of the Supreme Court of India so made in ***M/s Hiralal Rattanlal Vs. State of Uttar Pradesh and others (1973) 1SCC 216,*** which are quoted as under:

> *"In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear."*

From a plain reading of the said provision of law it is apparent that the language of section154 of the Code is absolutely clear and unambiguous and suggests of no other construction but literal construction.

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"It is, therefore, manifestly clear that if any information disclosing a cognizable offence is placed before an officer in charge of a police station said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

However, the condition that is sine qua non for recording an FIR under section 154 of the Code is that there must be an information and that information must disclose a cognizable offence.

It is relevant to mention that the object of using the word "shall" in the context of section 154 of the Code is to ensure that all information relating to all cognizable offences is promptly registered by the police and investigated in accordance with the provisions of law",

as has been observed in ***Khub Chand Vs. State of Rajasthan*** reported in ***AIR 1967 SC 1074.***

We have no reason to depart from the above observations, that vide section 154 of the Code if an information relating to commission of a cognizable offence is given, then it would mandatorily be registered by the officer-in-charge of the respective police station irrespective of the place of occurrence, for, the legislature in its collective wisdom has intentionally not included the place of occurrence relating to commission of a cognizable offence unlike section 155 of the Code where jurisdictional element is present in terms of information given to the officer in charge/police officer with regard to commission of a non-cognizable offence, as argued by Ms.

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Hussain. In other words, the officer in charge can not refuse to register the said information on the plea that the occurrence did not take place within his jurisdiction. Regulation 244(a) of the Police Regulation of Bengal (in short, PRB) further fortifies the said legal position, which provides as under: -

> *"২৪৪ ঃ কতিপয় মামলা ছাড়া সকল মামলার প্রাথমিক তথ্য লিপিবদ্ধ হবে (১৮৬১ সালের ৫নং আইনের ১২ ধারা)।-(ক) পুলিশের নিকট দাখিলকৃত সকল মামলা প্রথম দৃষ্টিতে তা মিথ্যা বা সত্য, গুরুতর বা সাধারণ দন্ডবিধির অধীনে দন্ডনীয় বা অন্য কোন বিশেষ বা স্থানীয় আইনে দন্ডনীয় যাই হোক না কেন তার প্রাথমিক তথ্য নিতে হবে। পুলিশ আইন ১৮৬১ এর ধারা ৩৪ অথবা পৌর, রেলওয়ে বা টেলিগ্রাফের বিরুদ্ধে কোন অপরাধের জন্য তা অপ্রযোজ্য হবে।*
>
> *(খ) ....*
> *(গ) ....*
> *(ঘ) .... "*

> *" 244 : First information to be recorded in all but certain cases [12 Act V of 1861].- (a) A first information shall be recorded in respect of every cognizable complaint preferred before the police, whether prima facie, false or true, whether serious or petty, whether relative to an offence punishable under the Indian Penal Code or any special or local law. This does not apply to cases under section 34 of the Police Act, 1861, or to offences against Municipal, Railway and Telegraph by-laws".*
>
> *(b) ... ...*
> *(c) ... ...*
> *(d) ... ..."*

From the above, it is abundantly clear that there is inviolable duty cast upon the police officer in charge of the respective police station to register an FIR once the information given to such an officer discloses a cognizable offence.

In the instant case, the categorical assertion of the petitioners is that after the alleged occurrence the victim went to 3 (three) different

police stations at around 4.00 a.m. i.e., Uttara Police Station, then Khilkhet Police Station and then to Gulshan Police Station to report commission of a cognizable offence but she was refused on the plea that the occurrence took place within the jurisdiction of another police station. Said assertion has not been denied by the respondents concern rather in their affidavits in compliance it has been averred that departmental actions have been duly initiated against the delinquent officers concern for their failure to discharge their professional duties. Under the circumstances, refusing to lodge FIR by the respondent Nos.4-6 as to the commission of a cognizable offence, is a violation of section 154 of the Code of Criminal Procedure.

In the instant case, the further assertion of the petitioners is that after being refused by the officers concern of Uttara, Khilkhet and Gulshan police stations respectively the victim went to Vatara Police Stations at around 6.00 a.m.; there she was reportedly compelled to wait for 3(three) hours for the officer in charge in order to have her information recorded under section 154 of the Code. Finally, at 12:30 p.m. her information was reduced to writing on Friday 22.05.2015. However, though subsequently she was sent to Victim Support Centre (VSC) at Tejgaon on 22.05.2015 but she was informed that she would be sent to Dhaka Medical College Hospital on 23.05.2015 for her medical examination i.e., after 24 hours of the alleged occurrence; which is a violation of section 32 of the Ain.

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Section 32 of the Nari-O-Shishu Nirjatan Daman Ain,2000(in short, the Ain) runs as follows:-

> "৩২, অপরাধের শিকার ব্যক্তির মেডিক্যাল পরীক্ষা- (১) এই আইনের অধীন সংঘটিত অপরাধের শিকার ব্যক্তির মেডিক্যাল পরীক্ষা সরকারী হাসপাতালে কিংবা সরকার কর্তৃক এতদুদ্দেশ্যে স্বীকৃত কোন বেসরকারী হাসপাতালে সম্পন্ন করা যাইবে।
>
> (২) উপ-ধারা (১) এ উল্লিখিত কোন হাসপাতালে এই আইনের অধীন সংঘটিত অপরাধের শিকার ব্যক্তির চিকিৎসার জন্য উপস্থিত করা হইল, উক্ত হাসপাতালের কর্তব্যরত চিকিৎসক তাহার মেডিক্যাল পরীক্ষা অতিদ্রুত সম্পন্ন করিবে এবং উক্ত মেডিক্যাল পরীক্ষা সংক্রান্ত একটি সার্টিফিকেট সংশ্লিষ্ট ব্যক্তিকে প্রদান করিবে এবং এইরূপ অপরাধ সংঘটনে বিষয়টি স্থানীয় থানাকে অবহিত করিবে।
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> (৩) এই ধারার অধীন যুক্তিসঙ্গত সময়ে মধ্যে কোন মেডিক্যাল পরীক্ষা সম্পন্ন না করার ক্ষেত্রে, তৎসম্পর্কে ব্যাখ্যা সম্বলিত প্রতিবেদন পর্যালোচনার পর নিয়ন্ত্রণকারী কর্মকর্তা কিংবা, ক্ষেত্রমত, মেডিক্যাল পরীক্ষার আদেশ প্রদানকারী কর্তৃপক্ষ বা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত কর্মকর্তা,ম্যাজিস্ট্রেট,ট্রাইবুনাল বা সংশ্লিষ্ট অন্য কোন কর্তৃপক্ষ যদি এই সিদ্ধান্তে উপনীত হন যে, যুক্তিসঙ্গত সময়ের মধ্যে মেডিক্যাল পরীক্ষা সম্পন্ন না হওয়ার জন্য সংশ্লিষ্ট চিকিৎসকই দায়ী, তাহা হইলে উহা দায়ী ব্যক্তির অদক্ষতা ও অসদাচরণ বলিয়া বিবেচিত হইবে এবং এই অদক্ষতা ও অসদাচরণ তাহার বার্ষিক গোপনীয় প্রতিবেদনে লিপিবদ্ধ করা হইবে এবং উপযুক্ত ক্ষেত্রে চাকুরী বিধিমালা অনুযায়ী তাহার বিরুদ্ধে ব্যবস্থা গ্রহন করা যাইবে, এবং সংশ্লিষ্ট চিকিৎসকের বিরুদ্ধে কর্তব্যে অবহেলার জন্য তাহার নিয়োগকারী কর্তৃপক্ষ বা ক্ষেত্রমত, যথাযথ কর্তৃপক্ষ কর্তৃক ব্যবস্থা গ্রহণের জন্য ট্রাইব্যুনাল নির্দেশ দিতে পারিবে। "

Vide section 32(1) of the Ain the medical examination of the victim is to be completed at a government hospital or any other hospital designated for this purpose.

Vide sub-section (2) if the victim is produced before the hospital concern the duty doctor of the said hospital shall complete her medical examination as early as possible (অতিদ্রুত সম্পন্ন করিবে) and shall issue a certificate to that effect to the person concern and shall inform the local police station as to the commission of said offence. However, vide sub-section (3) for the failure of the doctor concern to complete medical examination of the victim within reasonable time " যুক্তিসঙ্গত সময়ের মধ্যে" he shall be proceeded against for inefficiency "অদক্ষতা" and misconduct "অসদাচরন".

Immediate *medico-legal examination* of the victim of rape or sexual violence or assault is the most important factor in a case launched on the allegation of rape or related offence. Unfortunately, section 32 of the Ain is absolutely silent about the duty and the responsibility of the police officer of the respective police station to be undertaken on receipt of an information of commission of offence of rape or sexual violence. Rather, on being produced before the doctor concern for examination "চিকিৎসার জন্য উপস্থিত করা হইলে" the duty has been imposed upon him to complete said examination as early as possible "অতি দ্রুত সম্পন্ন করিবে".

In ***Pt. Parmanand Katar*** Vs. ***Union of India;(1989)4 SCC 286*** the Supreme Court of India has emphasized the paramount obligation of the doctor concern, whether in private or government service to render his/her services with due expertise for protecting the life of the victim without interference from laws or procedures. This duty needs no support from any code of ethics or rule of law. Said decision also casts a duty on the state machinery to abstain from unduly harassing the doctors who will have to be the witnesses in such cases. The Court further directed that this duty be duly published through visual, audio and print media.

On the face of the above loopholes existed in the statute viz., Nari-O-Shishu Nirjatan Daman Ain,2000 a direction has been given by this Court at the time of issuance of the Rule Nisi to issue a circular

as to the obligations of the police officer concern of the respective police station to ensure that required services are provided to all concern without any discrimination in particular on the grounds of religion, race, sex, caste or place of birth, and to record promptly and without delay any complaint so received regarding the allegation of rape.

In compliance thereof a circular being No.02/2015 was issued vide an administrative order under the signature of the Inspector General of Police vide Memo No. Na: O Shi: Pro:Cell/ Circular/44.01.0000. 047.01.011.15.223/1(105) dated 10.06.2015, as quoted above.

Clause 3 of the said circular provides that every information relating to commission of cognizable offence like rape, sexual assault etc. shall immediately be reduced to writing by the officer-in-charge of a police station without any discrimination whatsoever and without causing any delay. Clause 3 is quoted below:

> " ০৩। ধর্ষণ, যৌনপীড়নসহ নারী ও শিশু নির্যাতন সংক্রান্ত অপরাধের কোন অভিযোগ থানায় আসার সাথে সাথে কোন প্রকার বৈষম্য ও বিলম্ব ছাড়াই মামলা রুজু করতে হবে। "

The offence of rape is a cognizable offence; as such, there should be a penal provision if the officer in charge of a police station refuses to record the information reported relating to a cognizable offence including offence of rape.

Vide clause 4 of the circular immediate steps(অবিলম্বে) are to be taken for medico-legal examination of the victims/survivors. Clause 4 runs as under:

> "০৪। অপরাধের শিকার/ভিকটিম/ভুক্তভোগী/সারভাইভারদের অবিলম্বে ডাক্তারী পরীক্ষা করার ব্যবস্হা গ্রহণ করতে হবে।"

Vide clause 5 of the circular forensic evidence is to be collected properly (যথাযথভাবে) and to be preserved and if necessary (প্রয়োজনে) should be sent for chemical/DNA test. Clause 5 provides as follows:

> " ০৫। অপরাধের আলামতসমূহ যথাযথভাবে সংগ্রহ, সংরক্ষণসহ সেগুলোর প্রয়োজনে দ্রুত রাসায়নিক/ডিএনএ পরীক্ষার ব্যবস্হা করতে হবে।"

The word "অবিলম্বে" used in clause 4 is vague and unspecified, for, the victim who reports a rape or sexual assault is required to be sent to the hospital concern for medical examination preferrably within 24 (twenty four)hours of receipt of the complaint for proper collection of medico-legal evidence.

Moreso, the word "প্রয়োজনে" so used in clause 5 for sending forensic evidence for the purpose of chemical /DNA tests is also not tenable in view of the fact that in all rape cases or cases of sexual violence such tests are required to be conducted mandatorily in order to find out the real culprit.

Clause 6 of the circular provides that where Victim Support Centre/One Stop Crisis Centre/Cell has been established the victim of rape/sexual assault/survivor is to be sent there, if necessary, pending investigation:

" ০৬। যে সকল অধিক্ষেত্রে ভিকটিম সাপোর্ট সেন্টার/ওয়ান স্টপ ক্রাইসিস সেন্টার/সেল প্রতিষ্ঠিত হয়েছে সে সকল অধিক্ষেত্রে ধর্ষণ বা যৌন পীড়নের শিকার ব্যক্তি/ভিকটিম/সারভাইভার্সদেরকে প্রয়োজনে উক্ত ভিকটিম সাপোর্ট সেন্টার/ওয়ান স্টপ ক্রাইসিস সেন্টার/সেলে প্রেরণ করত মামলার তদন্ত কার্যক্রম অব্যাহত রাখতে হবে।"

In this regard, the contention of the petitioners is that said provision is silent as to whether any person, or a police officer or an officer of Victim Support Centre is to accompany the victim while going to the Centre. Moreover, no provision has been incorporated for providing interpretation services where necessary especially for women and girls with disabilities who are victims of rape or sexual assault; thus, leaving them without adequate legal support as well as effective access to justice.

We are in agreement with the said propositions.

In addition, every police station must have round the clock a female police officer not below the rank of a Constable. On receipt of the complaint/information of the offence of rape or sexual assault the duty officer recording the information shall call the female police official present at the police station and make the victim and her family members comfortable.

Moreso, the duty officer immediately upon receipt of the complaint/information shall inform the Victim Support Centre.

After reducing the information into writing, the Investigating Officer along with the female police official available, escort the victim for medical examination.

Moreover, the Investigating Officer shall endeavour to complete the investigation at an earliest; and in case where the victim reports any threat being posed by the accused or his family the officer concern of the respective police station shall take immediate steps under section 506 of the Penal Code.

However, the further contention of the petitioners is that the name of the victim has been disclosed in various documents annexed to the affidavits of the respondents concern, which is opposed to section 14 of the Ain,2000 and hence, needs to be redacted. Section 14 of the Ain,2000 provides as under:

> **"সংবাদ মাধ্যমে নির্যাতিতা নারী ও শিশুর পরিচয় প্রকাশের ব্যাপারে বাধা-নিষেধ।**-(১) এই আইনে বর্ণিত অপরাধের শিকার হইয়াছেন এইরুপ নারী বা শিশুর ব্যাপারে সংঘটিত অপরাধ বা তৎসম্পর্কিত আইনগত কার্যধারার সংবাদ বা তথ্য বা নাম-ঠিকানা বা অন্যবিধ তথ্য কোন সংবাদ পত্রে বা অন্য কোন সংবাদ মাধ্যমে এমনভাবে প্রকাশ বা পরিবেশন করা যাইবে যাহাতে উক্ত নারী বা শিশুর পরিচয় প্রকাশ না পায়।
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> (২) উপ-ধারা (১) এর বিধান লংঘন করা হইলে উক্ত লংঘনের জন্য দায়ী ব্যক্তি বা ব্যক্তিবর্গের প্রত্যেকে অনধিক দুই বৎসর কারাদন্ডে বা অনূর্ধ্ব এক লক্ষ টাকা অর্থদন্ডে বা উভয় দন্ডে দন্ডনীয় হইবেন। "

Vide the said provision of law publication in the media of the name of any victim in a pending case under the Ain is prohibited with a view to ensure her safety and security.

The respondents concern are to keep the same in mind as a general practice in cases of rape or sexual assault and also the cases involving vulnerable women and children.

33/50

The fundamental rights to life or personal liberty (Article 32 of the Constitution), to equality before law (Article 27 of the Constitution), not to be discriminated on the grounds of religion, race, caste, sex or place of birth (Article 28(1) of the Constitution), to work in her chosen profession occupation, trade or business (Article 40 of the Constitution) and to enjoy protection of law, and to be treated in accordance with law and only in accordance with law(Article 31 of the Constitution) undoubtedly include protection from sexual harassment, which our Constitution guarantees.

Further, the Preamble to the Constitution guarantees democracy and socialism meaning economic and social justice which automatically include gender justice, liberty of thought, expression, belief, faith and worship; equality of status and opportunity that would again strengthen the concept of equality.

The right to be protected from sexual harassment or assault is, therefore, guaranteed by the Constitution, and is one of the pillars on which the very construct of gender justice stands: as has been observed by the Supreme Court of India in ***Vishakha Vs. State of Rajasthan, AIR 1997 SC 3011*** and also in ***Apprel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC625.***

This right is further fortified by the fundamental principles of State policy contained in Articles 8, 10, 11, 15, 19 and 21 of our Constitution, which are to be construed harmoniously with the fundamental rights as guaranteed in Part III; and these fundamental

principles bind the State while discharging its rule of governance of the country. Also, considering the fact that Bangladesh is one of the signatories of the Declaration on the Elimination of all Forms of Discrimination Against Women, 1979 as well as the Declaration on the Elimination of Violence against Women, (Resolution No.48/104 dated 20.12.1993).

Article 1 of the said Declaration provides as follows:-

> *"For the purposes of the Declaration the term "violence against women" means any act of gender-based violence that results in or is likely to result in physical sexual or psychological harm or suffering to women including threats of such acts, coercions or arbitrary deprivation of liberty, whether occurring in public or in private life.";*

Article 4 of the said Declaration requires the State to ensure "*exercise of due diligence in prevention, investigation and punishment of offences of violence against women, to provide prompt and effective responses in cases of sexual violence against women.*"

Therefore, the State has obligation also under the international law to provide a safe environment, at all times, for women, who constitute half the nation's population. This role is not merely responsive to apprehend and punish the culprits for their crimes; but also to prevent commission of any crime to the best of its ability with

the aid of law enforcing agency and justice delivery system coupled with the discharge of the fundamental duties of every citizen.

This Court, however, appreciates the effort taken by the respondents concern incorporating specific guidelines to be followed by the police officer concern of the respective police station with regard to recording an FIR as well as dealing with the rape victim but those guidelines are the product of administrative order; consequently, has no force of law.

Now, time has come to take immediate steps towards filling up the above loopholes, as observed earlier, making necessary amendments in the existing laws and by implementing the recommendations of the Law Commission of Bangladesh on the subject matter in question as well as the National Action Plan to Prevent Violence Against Women and Children 2013-2015 so has been formulated by the respective ministries with a view to discharge the obligation of the State to ensure gender justice including giving protection to women, girls and children from being subjected to rape or sexual assault in any form whatsoever.

However, fact remains that the existing procedural frame works to ensure effective protection of the victims of rape, sexual violence and other gender based violence are not adequate.

In order to fill up the gap in between, we issue the following directives in the form of guidelines, of which this Court has power under Article 102 of the Constitution and are binding on all concerned

in view of Article 111 of the Constitution and are to be implemented in the respective field until such legislative vacuum is filled up by necessary enactment by our legislature.

1) Every information relating to commission of cognizable offence including rape, sexual assault or like nature shall immediately be reduced to writing by the officer-in-charge of a police station irrespective of the place of occurrence without any discrimination whatsoever and without causing any delay.
2) Also, a designated website should be opened enabling the informant to register his/her complaint online.
3) The statute should contain specific provision dealing with refusal or failure of the officer concern of the respective police station without sufficient cause to register such cases.
4) Every police station must have round the clock a female police officer not below the rank of a Constable. On receipt of the information of the offence of rape or sexual assault the duty officer recording the information shall call the female police officer present at the police station and make the victim and her family members comfortable.
5) At all stages the identity of the victim should be kept confidential.
6) To keep a list of female social workers who may be of assistance at all police stations.

7) The statements of the victim should be recorded in the presence of a lawyer or friend nominated by her, or a social worker or protection officer.

8) The victim should be made aware of her right to protection from the State and to give any information she requests on the matter.

9) The duty officer immediately upon receipt of the information shall inform the Victim Support Centre.

10) Interpretation services should be provided where necessary especially for women or girls with disabilities who are victims of rape or sexual assault.

11) After reducing the information into writing, the Investigating Officer along with the female police official available, shall escort the victim for medical examination without causing delay.

12) The Victim Support Centre should be discreet and should at all times have all the facilities required for the recovery of the victim.

13) In all rape cases or cases of sexual assault chemical/DNA tests are required to be conducted mandatorily.

14) The DNA and other samples should be sent to the concerned Forensic Science Lab or DNA Profiling Centres with 48(forty-eight) hours of the alleged occurrence.

15) Any failure of duty on the part of the investigating agency in collecting the report or causing the victim to be taken to the nearest hospital for medical examination would be punishable offence.

16) The investigating officer shall endeavour to complete the investigation at an earliest.

17) There should be wider dissemination of the national line number on violence against women, girls or children namely 10921 through visual, audio as well as in the print media including designated websites.

18) In addition to the above, to establish an office in every Metropolitan City for the purpose of providing necessary security, medical, chemical and counselling assistance and secured protection for the victim.

The respondents concern are hereby directed to follow and observe the above guidelines strictly, until required legislation is enacted by the Parliament on the subject matter in question.

With the above observations and directions this Rule is accordingly disposed of.

Office is directed to communicate the judgment and order to the Ministry of Law, Justice and Parliamentary Affairs, Ministry of Children and Women Affairs and Ministry of Home Affairs as well as the Inspector General of the Police for taking necessary steps in view

of the recommendations, observations and directions referred above in the form of guidelines.

Before we part we would like to record our note of appreciation to the petitioners organisations for advancing the cause in question before this Court in greater public interest and also for providing assistance with substantive materials for effective disposal of the Rule Nisi.

There will be no order as to costs.

Farah Mahbub

Kazi Md. Ejarul Haque Akondo, J:

I agree.

Kazi Md. Ejarul Haque Akondo

Typed by: Altaf: 19.04.2018.
Read by:
Exam. by:
Readied by:

প্রত্যায়িত অবিকল প্রতিলিপি
22.04.18
সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮৭২ ইং সনের ১নং আইনের)
৭৬ ধারামতে ক্ষমতা প্রাপ্ত

মোঃ আব্দুর রশিদ
প্রশাসনিক কর্মকর্তা

22.04.18
মোঃ জাকির হোসেন
সুপারিনটেনডেন্ট

"দেশপ্রেমের শপথ নিন, দুর্নীতিকে বিদায় দিন"